

PAUL L. REIN, Esq. (SBN 43053)
PATRICIA BARBOSA, Esq. (SBN 125865)
JULIE MCLEAN, Esq. (SBN 215202)
LAW OFFICES OF PAUL L. REIN
200 Lakeside Drive, Suite A
Oakland, CA 94612
(510) 832-5001

Attorneys for Plaintiff
SHARON LETCHER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHARON LETCHER

CASE NO.

Plaintiff,

Civil Rights

v.

CITY AND COUNTY OF SAN
FRANCISCO; BOARD OF TRUSTEES
SAN FRANCISCO WAR MEMORIAL AND
PERFORMING ARTS CENTER; SAN
FRANCISCO PERFORMANCES, INC.;
SAN FRANCISCO SYMPHONY; and
DOES 1-25, Inclusive,

Defendants.

**COMPLAINT FOR DENIAL OF DISABLED
ACCESS TO DISABLED PERSONS IN
VIOLATION OF TITLE II AND TITLE
III OF THE AMERICANS WITH
DISABILITIES ACT; VIOLATION OF
§504 OF THE REHABILITATION ACT
OF 1973; VIOLATION OF CALIFORNIA
GOVERNMENT CODE §4450 ET SEQ;
VIOLATION OF CALIFORNIA CIVIL
CODE §§51, 52, 54 AND 54.1;
VIOLATION OF CALIFORNIA HEALTH
AND SAFETY CODE §§ 19952, 19955,
et seq. AND RELATED CODES AND
REGULATIONS**

/ **DEMAND FOR JURY TRIAL**

Plaintiff SHARON LETCHER complains that defendants
CITY AND COUNTY OF SAN FRANCISCO; BOARD OF TRUSTEES FOR THE SAN
FRANCISCO WAR MEMORIAL AND PERFORMING ARTS CENTER; SAN
FRANCISCO PERFORMANCES, INC.; SAN FRANCISCO SYMPHONY; and DOES
1-25, (hereinafter "defendants"), have denied her and continue
to deny her "full and equal access" to the public
accommodations, business establishment, and goods and services

Complaint for Injunctive Relief and Damages

- 1 -

1 offered to the general public, at the Davies Symphony Hall
2 located in San Francisco, California, because of her physical
3 disability, in violation of Titles II and III of the Americans
4 with Disabilities Act and California civil rights laws and
5 regulations, and hereby more particularly alleges as follows:

6 1. Plaintiff SHARON LETCHER is a "person with a
7 disability" or "physically handicapped person," who requires
8 the use of a wheelchair for mobility and is unable to use
9 portions of public facilities that are not accessible to
10 disabled persons who require the use of a wheelchair.

11 2. **INTRODUCTION:** This case involves the denial of
12 accessible facilities and a failure to modify policies and
13 procedures to provide full and equal access to plaintiff SHARON
14 LETCHER at the Davies Symphony Hall in San Francisco,
15 California. The property at issue in this action is owned and
16 operated and/or leased by the City and County of San Francisco
17 through its Trustees for the San Francisco War Memorial and
18 Performing Arts Center. Defendants San Francisco Performances,
19 Inc. and the San Francisco Symphony are operators and lessors
20 of the property and offer concert performances to the general
21 public.

22 3. This action is limited to Davies Hall and its related
23 public facilities including public entrances, paths of travel,
24 public restrooms, disabled seating in the theater, and
25 defendants' policies and practices in providing their programs,
26 goods, and services to disabled persons at Davies Hall.
27 Plaintiff SHARON LETCHER alleges that she was denied her civil
28 rights under both California law and federal law because of

defendants' discriminatory policy of refusing to provide proper wheelchair accessible seating for patrons who purchase Senior Package tickets for the San Francisco Symphony's performances. Plaintiff SHARON LETCHER is deterred from returning to the Davies Symphony Hall until such time as defendants' discriminatory policies are modified, and the facilities are made fully accessible. Plaintiff seeks injunctive relief to require defendants to modify their policies and procedures to provide their goods and services and "programs, services, and activities" to disabled persons such as plaintiff without discrimination; and to make their facilities accessible to disabled persons as required by law. In the alternative, plaintiff seeks to enjoin the subject facilities from operating as a place of "public accommodation" or "business establishment" so long as it discriminates against plaintiff and other persons with disabilities. Plaintiff also seeks recovery of damages for her discriminatory experiences and for the denial of access that resulted from defendants' discriminatory policies and failure to provide accessible facilities for the eight concert senior citizen tickets she purchased for the 2003-2004 concert series. Plaintiff SHARON LETCHER also seeks recovery of statutory attorney fees, litigation expenses and costs, under federal law and California law.

4. **JURISDICTION:** This Court has jurisdiction of this action pursuant to 28 USC §1331 for violations of the Americans with Disabilities Act of 1990 ("ADA"). (42 USC §12101 et seq.) Pursuant to supplemental jurisdiction, attendant and related

1 causes of action arising from the same facts are also brought
 2 under California law, including but not limited to violations
 3 of California Government Code §4450 et seq.; California Civil
 4 Code §§ 51, 52, 54, 54.1 and 55; California Health & Safety
 5 Code §§ 19952, 19955 et seq., including §19959; and California
 6 Code of Regulations Title 24-2 (hereinafter "Title 24").

7 5. **VENUE:** Venue is proper in this court pursuant to 28
 8 USC 1391(b) because the subject property is located in this
 9 district and plaintiff's causes of action arose here.

10 6. **INTRADISTRICT:** This case should be assigned to the
 11 San Francisco/Oakland intradistrict, where the subject property
 12 is located and where plaintiff's causes of action arose.

13 7. **PARTIES:** Plaintiff SHARON LETCHER is a "qualified"
 14 physically disabled person due to multiple sclerosis who
 15 requires use of a wheelchair for mobility. The CITY AND COUNTY
 16 OF SAN FRANCISCO; BOARD OF TRUSTEES FOR THE SAN FRANCISCO WAR
 17 MEMORIAL AND PERFORMING ARTS CENTER; SAN FRANCISCO
 18 PERFORMANCES, INC.; SAN FRANCISCO SYMPHONY; and DOES 1-25,
 19 Inclusive, are the owners, operators, lessors, and lessees of
 20 the property, building, facilities, and business establishment
 21 known as "Davies Symphony Hall" located at Grove and Van Ness,
 22 San Francisco, California.

23 8. Defendants are subject to Titles II and III of the
 24 Americans with Disabilities Act of 1990, to §504 of the
 25 Rehabilitation Act of 1973, to the requirements of California
 26 State law requiring full and equal access to publicly funded
 27 facilities pursuant to Government Code §4450 et seq., Health
 28

1 and Safety Code §§19952, 19953, 19955 et seq., and elsewhere,
 2 including Civil Code §§51, 52, 54, 54.1, and 54.2.

3 9. Plaintiff is informed and believes and therefore
 4 alleges that the specified public facilities owned and maintained
 5 by defendants, The CITY AND COUNTY OF SAN FRANCISCO; BOARD OF
 6 TRUSTEES FOR THE SAN FRANCISCO WAR MEMORIAL AND PERFORMING ARTS
 7 CENTER; SAN FRANCISCO PERFORMANCES, INC.; SAN FRANCISCO SYMPHONY
 8 and DOES 1 through 25, Inclusive, are buildings, structures or
 9 related facilities within the meaning of California Government
 10 Code §§4450, 4451 and Health & Saf. Code §§ 19952, 19953, 19955
 11 and 19956-19959. Plaintiff is further informed and believes and
 12 thereon allege that the defendants, The CITY AND COUNTY OF SAN
 13 FRANCISCO; BOARD OF TRUSTEES FOR THE SAN FRANCISCO WAR MEMORIAL
 14 AND PERFORMING ARTS CENTER; SAN FRANCISCO PERFORMANCES, INC.; SAN
 15 FRANCISCO SYMPHONY DOES 1 through 25, Inclusive, have
 16 constructed, altered, or repaired parts of these public
 17 buildings, structures and facilities since original construction
 18 in 1980 and since they were first constructed within the meaning
 19 of California Government Code §§4450, 4451 and 4456, Health &
 20 Safety Code §§ 19956 and 19959, thereby requiring provision of
 21 access to persons with disabilities; and since 1992 within the
 22 meaning of Titles II and III of the ADA, requiring a modification
 23 of policies and procedures to ensure that the goods and services
 24 offered to the general public, including special programs for
 25 seniors, are provided to persons with disabilities with full and
 26 equal access. An award of statutory attorney fees, litigation
 27 expenses and costs, including but not limited to public interest
 28 attorney fees pursuant to California Code of Civil Procedure §

1 1021.5 are sought by plaintiff.

2 10. The establishment known as the Davies Symphony Hall
3 is also operated as a "public accommodation" and "business
4 entity" subject to the requirements of California Health &
5 Safety Code §§19952, 19953 and 19955 et seq. and of California
6 Civil Code §§ 51, 51.5, 52, 54 and 54.1, et seq. On
7 information and belief, such facilities have, since initial
8 construction in 1980, undergone additional construction and/or
9 "alterations, structural repairs, or additions," subjecting all
10 such buildings and facilities to disabled access requirements
11 pursuant to Health & Safety Code §19952-19959, et seq. On
12 information and belief Davies Hall has also undergone
13 significant alterations and renovations since January 26, 1993
14 subjecting defendants to the obligations of Title II and III to
15 modify their policies and procedures to ensure that the
16 programs, services, activities and goods offered to the public
17 are offered to persons with disabilities in a full and equal
18 manner.

19 11. The true names and capacities of Does 1 through 25,
20 inclusive, are unknown to plaintiff who therefore sues said
21 defendants by such fictitious names. Plaintiff is informed and
22 believes that each of the defendants herein designated as Doe
23 1-25 is legally responsible in some manner for the events and
24 happenings herein referred to and caused injury and damages
25 proximately thereby to plaintiff; plaintiff prays leave of
26 Court to amend this Complaint to show such true names and
27 capacities when the same have been ascertained.

28

12. Defendants The CITY AND COUNTY OF SAN FRANCISCO; BOARD OF TRUSTEES FOR THE SAN FRANCISCO WAR MEMORIAL AND PERFORMING ARTS CENTER; SAN FRANCISCO PERFORMANCES, INC.; SAN FRANCISCO SYMPHONY and DOES 1-25, inclusive, are and were the owners, operators, lessors and lessees of the subject property, buildings, facilities and business establishment at all relevant times. Plaintiff is informed and believes that each of the defendants herein is the agent, employee or representative of each of the other defendants, and performed all acts and omissions stated herein within the scope of such agency or employment or representative capacity and is responsible in some manner for the acts and omissions of the other defendants in proximately causing the damages complained of herein.

13. Plaintiff will seek leave to amend her Complaint when the true names, capacities, connections, and responsibilities of defendants The CITY AND COUNTY OF SAN FRANCISCO; BOARD OF TRUSTEES FOR THE SAN FRANCISCO WAR MEMORIAL AND PERFORMING ARTS CENTER; SAN FRANCISCO PERFORMANCES, INC.; SAN FRANCISCO SYMPHONY; and DOES 1-25, inclusive, are ascertained. References to "Defendants," unless otherwise specified, shall be deemed to refer to all defendants and each of them.

**FIRST CAUSE OF ACTION:
DAMAGES AND INJUNCTIVE RELIEF FOR DENIAL OF FULL AND EQUAL
ACCESS TO A PLACE OF PUBLIC ACCOMMODATION
(Civil Code §§ 54, 54.1, et seq.; Health & Safety Code §§
19952, 19953 and 19955 et seq.)**

14. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the factual allegations contained in Paragraphs 1 through 13, above, and

1 incorporates them herein by reference as if separately repled
2 hereafter.

3 15. **STATUTORY PROVISIONS:** Government Code §§4450 et
4 seq. were enacted to ensure "that all buildings, structures,
5 sidewalks, curbs, and related facilities constructed in this
6 state by the use of state, county or municipal finds... shall be
7 accessible to and usable by persons with disabilities."

8 Government Code § 4456 requires that any publicly funded
9 "building or facility" altered, structurally repaired or added
10 to after November 13, 1968 be "accessible to and useable by
11 persons with disabilities." On information and belief, Davies
12 Hall was originally constructed in 1980, and has undergone
13 significant "alterations, structural repairs and additions"
14 that triggered disabled access under Title 24, California Code
15 of Regulations, which was in effect at the time of each
16 alteration which, on information and belief, occurred at such
17 public facility since January 1, 1982, thus requiring access
18 complying with the specifications of Title 24 whenever each
19 such "alteration, structural repair or addition" was carried
20 out. Such "alterations, structural repairs or additions"
21 included a major structural and interior renovation in 1992.
22 Section 4450ff Government Code and Title 24-2 also impose
23 additional access requirements with which defendants have not
24 complied, including accessible wheelchair and companion seating
25 in Davies Hall. On information and belief, construction and
26 alterations occurred after January 26, 1992, which also
27 triggered access requirements under the standards and
28 regulations for implementing Titles II and III of the ADA,

1 including the obligation for defendants to provide their senior
 2 citizen programs and tickets so that such programs are
 3 accessible to and usable by persons with disabilities.

4 16. California Civil Code §54.1 states that
 5 individuals with disabilities are "entitled to full and equal
 6 access, as other members of the general public, to
 7 accommodations, advantages, facilities...places of public
 8 accommodations, amusement, or resort, and other places to which
 9 the general public is invited, subject only to the conditions
 10 and limitations established by law...and applicable alike to
 11 all persons." Health and Safety Code 19952 provides that
 12 theaters, concert halls, and stadiums "shall provide seating or
 13 accommodations for physically disabled persons in a variety of
 14 locations within the facility...so as to provide these persons
 15 a choice of admission prices otherwise available to members of
 16 the general public." Health & Safety Code §§ 19955 and 19955.5
 17 were enacted "To ensure that public accommodations or
 18 facilities constructed in this state with private funds adhere
 19 to the provisions of Chapter 7 (commencing with §4450) of
 20 Division 5 of Title 1 of the Government Code." California Code
 21 of Regulations, Title 24-2 ("Title 24-2") was in effect at the
 22 time of each alteration which occurred at such public facility
 23 since July 1, 1982, additionally requiring access complying
 24 with the specifications of Title 24-2 whenever any
 25 construction, "alteration, structural repair or addition" was
 26 performed. All such constructions and/or alterations were
 27 carried out by the current defendant owners or operators, or by
 28 their predecessors in interest, whose acts and omissions are

1 the continuing and current responsibility of all current
2 owners, operators, lessors and lessees.

3 17. **FACTUAL STATEMENT:** Plaintiff Sharon Letcher is a
4 physically disabled person as the result of multiple sclerosis.
5 During the summer of 2004, Plaintiff received information from
6 defendants advertising a special series of concert tickets for
7 Davies Symphony Hall available for senior citizen at a
8 discounted rate for the 2004-2005 season. After receiving this
9 information plaintiff called the ticket box office for Davies
10 Symphony Hall requesting information concerning accessible and
11 companion seating and was told it was available. Plaintiff
12 thereafter purchased a set of eight (8) concert tickets under
13 defendants' special program for senior citizens for her and a
14 companion. She informed the ticket seller that she was
15 physically disabled.

16 18. Plaintiff thereafter received concert tickets from
17 defendants with the first concert ticket scheduled for October
18 14, 2004. On or about October 14, 2004, plaintiff went in her
19 wheelchair to the Davies Hall for the first concert of her
20 series tickets. When plaintiff arrived she went to find the
21 seat indicated on her ticket, in 2 Tier E, seats 9 and 11, only
22 to find that her assigned seats was located down two steps from
23 the aisle way. Plaintiff contacted the usher and informed her
24 that she could not use the seats assigned to her because they
25 were not accessible to her in her wheelchair. Defendants'
26 employees contacted plaintiff and offered plaintiff an
27 available accessible seat in the orchestra section. Plaintiff
28 accepted this offer and was taken by employees to the orchestra

1 section. On information and belief the public path of travel
2 from the lobby to the orchestra section is dangerously steep
3 with a slope far exceeding the maximum 8.3% slope allowed by
4 law. An "alternate" path of to the orchestra section, through
5 an employee area and back hallways, is also inaccessible for
6 disabled persons with excessive slopes and cross slopes,
7 inaccessible doorways and no signage. The designated
8 "accessible" seating in the orchestra seating is also not
9 properly located or configured, and is not located adjacent to
10 the designated companion seating.

11 19. During the week following the October 14th concert
12 plaintiff called defendants to let defendants know that the
13 remaining seven senior citizen concert tickets in her concert
14 package were not for accessible seats, and to ask defendants to
15 reassign her seats to an accessible location. Defendants'
16 employee informed plaintiff that if she wanted accessible seats
17 she could purchase tickets in the orchestra section, but she
18 would have to pay for orchestra seats at a much higher rate
19 than the rate for the special "Senior Citizen" tickets.
20 Plaintiff was not willing to pay the additional cost and asked
21 to be accommodated. Defendants informed plaintiff that she
22 could return the tickets for inaccessible seats. Plaintiff
23 returned the tickets for the remaining seven (7) concerts and
24 was not able to attend the concert series she had paid for
25 because she was assigned inaccessible seats.

26 20. On information and belief, although there may be
27 "accessible" seating facilities at the Davies Hall, defendants
28 have failed to modify their policies and procedures to ensure

1 that the accessible seating is available for disabled guests.
2 On information and belief, the accessible seats are sold to
3 able-bodied persons without reserving or giving disabled
4 persons equal opportunity to purchase accessible seats. For
5 example, although able-bodied guests may purchase tickets via
6 the Internet or through ticket services such as Ticket Master,
7 persons needing disabled accessible seats cannot purchase
8 tickets except through the box office, with limited hours and
9 access. As a result of this policy, accessible seats are not
10 reserved for disabled use and are instead sold via ticket
11 agents and the internet to able-bodied guests. Therefore, when
12 plaintiff sought to exchange her tickets, she could not be
13 provided any accessible seats in accessible locations because,
14 on information and belief they had all been sold to able-bodied
15 persons instead of being reserved for use by disabled persons.
16 The only remaining seats were those in the orchestra section
17 for much higher cost.

18 21. In addition to the discriminatory policy of refusing
19 to provide wheelchair seating to patrons who purchase Senior
20 Package tickets, and the discriminatory policy of failing to
21 reserve accessible seats, on information and belief, the
22 facilities are inaccessible to persons with disabilities in
23 other aspects, including, but not limited to, seating in the
24 front orchestra seats that is not correctly sized and located
25 for use by a wheelchair patron and his or her guest, and an
26 inaccessible path of travel to this seating, rendering such
27 facilities inaccessible to and unusable by plaintiff and other
28 mobility disabled persons. Defendants must be enjoined from

1 maintaining a discriminatory policy of refusing to provide
2 accessible wheelchair seating to patrons who purchase Senior
3 Package tickets; modifying their policies and procedures to
4 allow disabled persons the same opportunity to purchase
5 accessible seats in a variety of locations at a variety of
6 prices; and to require that all facilities at the subject
7 property be brought into compliance with all applicable federal
8 and state requirements for disabled access.

9 22. Further, each and every violation of the Americans
10 With Disabilities Act of 1990 ("ADA"), (as pled in the Fourth
11 Cause of Action, the contents of which are repled and
12 incorporated herein, word for word, as if separately repled),
13 also constitutes a separate and distinct violation of
14 California Civil Code §§54(c) and 54.1(d), thus independently
15 justifying an award of damages as to defendants San Francisco
16 Performances, Inc. and San Francisco Symphony only, per §54.3
17 and injunctive relief pursuant to California law, including but
18 not limited to §55 Civil Code and §19953 Health and Safety
19 Code, as to all defendants.

20 23. **INJUNCTIVE RELIEF:** Plaintiff seeks injunctive relief
21 to prohibit the acts and omissions of defendants as complained
22 of herein which are continuing and which have the effect of
23 wrongfully excluding plaintiff and other members of the public
24 who are physically disabled wheelchair users from full and
25 equal access to these public facilities. Such acts and
26 omissions are the cause of humiliation and mental and emotional
27 suffering of plaintiff SHARON LETCHER in that these actions
28 continue to treat her as an inferior and second class citizen

1 and serve to discriminate against her on the sole basis that
 2 she is a person with disabilities who requires the use of a
 3 wheelchair for movement in public places. Plaintiff is unable
 4 to achieve equal access to and use of these public facilities
 5 so long as such acts and omissions of defendants continue. The
 6 acts of defendants have proximately caused and will continue to
 7 cause irreparable injury to plaintiff if not enjoined by this
 8 Court.

9 24. Wherefore plaintiff asks this Court to preliminarily
 10 and permanently enjoin any continuing refusal by defendants to
 11 grant full and equal access to plaintiff in the respects
 12 complained of and to require defendants to comply forthwith
 13 with the applicable statutory requirements relating to access
 14 for disabled persons, or, alternatively, to close their
 15 inaccessible facilities to the public and cease to operate
 16 their business in a discriminatory manner. Such injunctive
 17 relief is provided by Health & Safety Code §19953 and
 18 California Civil Code §55, and other law.

19 25. The actions and omissions of Defendants, the CITY AND
 20 COUNTY OF SAN FRANCISCO and BOARD OF TRUSTEES FOR THE SAN
 21 FRANCISCO WAR MEMORIAL AND PERFORMING ARTS CENTER and DOES 1
 22 through 25, Inclusive, as herein alleged, constitute a denial of
 23 access to and use of the described public facilities owned or
 24 operated by a public entity for the use of physically disabled
 25 persons within the meaning of California Government Code §4450 et
 26 seq. and Health & Safety Code §§ 19955 et. seq. As a proximate
 27 result of Defendants' the CITY AND COUNTY OF SAN FRANCISCO and
 28 BOARD OF TRUSTEES FOR THE SAN FRANCISCO WAR MEMORIAL AND

1 PERFORMING ARTS CENTER and DOES 1 through 25, Inclusive, actions
 2 and omissions, Defendants have discriminated against Plaintiff in
 3 violation of California Government Code §§4450 *et seq.*, Health &
 4 Safety Code §§ 19955 *et seq.* and of Title 24 regulations adopted
 5 to implement California law.

6 26. Plaintiff has no adequate remedy at law, and unless the
 7 relief requested herein is granted, Plaintiff will continue to
 8 suffer discrimination and to be deterred from using defendants'
 9 public accommodations as a result of Defendants' failure to
 10 fulfill their obligations to provide meaningful access to the
 11 Davies Symphony Hall and its related public accommodations.

12 27. **DAMAGES:** As to Defendants SAN FRANCISCO PERFORMANCES,
 13 INC. and THE SAN FRANCISCO SYMPHONY. As a result of
 14 defendants' discriminatory policy and the denial of equal
 15 access to the facility due to the acts and omissions of
 16 defendants and each of them in owning, operating, leasing,
 17 constructing, altering, and maintaining the subject public
 18 facilities, plaintiff suffered a violation of her civil rights
 19 including but not limited to rights under Civil Code §§ 54 and
 20 54.1, and, on information and belief, suffered mental and
 21 emotional distress, embarrassment and humiliation, all to her
 22 damages as hereinafter stated. Defendants' actions and
 23 omissions to act constitute discrimination against plaintiff on
 24 the sole basis that she was and is physically disabled and
 25 unable, because of the discriminatory policies and
 26 architectural barriers created and/or maintained by the
 27 defendants in violation of the subject laws, to use the public
 28 facilities on a full and equal basis as other persons.

1 Plaintiff also seeks trebling of all actual damages, general
2 and special, as provided by Civil Code §54.3.

3 28. **TREBLE DAMAGES:** As to Defendants SAN FRANCISCO
4 PERFORMANCES, INC. and THE SAN FRANCISCO SYMPHONY: On
5 information and belief, defendants have exhibited a conscious
6 disregard for the rights of plaintiff and other disabled
7 persons, which justifies treble damages pursuant to Civil Code
8 §54.3. Defendants' intentional and discriminatory policy of
9 refusing to provide accessible wheelchair seating to patrons
10 who purchase Senior Package tickets, and their refusal to
11 accommodate plaintiff by providing her accessible seats for the
12 seven remaining "senior series" concerts, evidences intentional
13 discrimination and conscious disregard for the rights of
14 disabled persons.

15 29. **FEES AND COSTS:** As a result of defendants' acts and
16 omissions, plaintiff has been required to incur attorney fees,
17 litigation expenses, and costs as provided by statute, in order
18 to enforce plaintiff's rights and to enforce provisions of the
19 law protecting access for disabled persons and prohibiting
20 discrimination against disabled persons. Plaintiff therefore
21 seeks recovery of all reasonable attorney fees, litigation
22 expenses, and costs, pursuant to the provisions of Civil Code
23 §§ 54.3 and 55 and Health and Safety Code §19953. Additionally,
24 plaintiff's lawsuit is intended to force the defendants to
25 modify their discriminatory policies and to make their
26 facilities accessible to all disabled members of the public,
27 justifying "public interest" attorney fees, litigation expenses
28

1 and costs pursuant to the provisions of §1021.5 Code of Civil
2 Procedure and other applicable law.

3 Wherefore plaintiff prays for relief as hereinafter
4 stated.

5 **SECOND CAUSE OF ACTION:**
6 **VIOLATION OF UNRUH CIVIL RIGHTS ACT**
7 **CALIFORNIA CIVIL CODE §§ 51 AND 52,**
8 **DENIAL OF FULL AND EQUAL ACCOMMODATION IN A BUSINESS**
9 **ESTABLISHMENT ON THE BASIS OF DISABILITY**

10 30. Plaintiff repleads and incorporates by reference, as
11 if fully set forth again herein, the factual allegations
12 contained in Paragraphs 1 through 29, above, and incorporates
13 them herein by reference as if separately repled hereafter.

14 31. At all times herein mentioned, the Unruh Civil Rights
15 Act, California Civil Code §51(b), provided that:

16 All persons within the jurisdiction of this state are free
17 and equal, and no matter what their sex, race, color
18 religion, ancestry, national origin, disability or medical
19 condition are entitled to the full and equal
20 accommodations, advantages, facilities, privileges, or
21 services in all business establishments of every kind
22 whatsoever.

23 Pursuant to Cal. Civil Code §51(f),

24 A violation of the right of any individual under the
25 Americans with Disabilities Act of 1990 (Public Law 101-
26 336) shall also constitute a violation of this section.

27 32. Defendants' theater facilities are a "business
28 establishment" subject to Cal. Civil Code §51(b). Plaintiff
suffered damages as above described as a result of defendants'
violation of California Civil Code §§ 51(b) and 51(f) in
multiple respects, including but not limited to violations of
the ADA, as described in the Third Cause of Action, infra, the
contents of which cause of action are incorporated herein as if
separately repled. California Civil Code §52(a) provides that

1 each such violation entitles plaintiff to "the actual damages,
2 and any amount that may be determined by a jury, or a court
3 sitting without a jury, up to a maximum of three times the
4 amount of actual damage but in no case less than four thousand
5 dollars (\$4,000), and any attorney's fees that may be
6 determined by the court in addition thereto..."

7 WHEREFORE, plaintiff prays for damages as to
8 Defendants SAN FRANCISCO PERFORMANCES, INC. and THE SAN
9 FRANCISCO SYMPHONY only and injunctive relief as to all
10 defendants, as hereinafter stated.

11
12 **THIRD CAUSE OF ACTION:**
13 **VIOLATION OF TITLE III OF THE AMERICANS WITH**
14 **DISABILITIES ACT OF 1990 (42 USC §12101FF):**
PROHIBITION AGAINST DISCRIMINATION IN A PLACE OF ACCOMMODATION
ON THE BASIS OF DISABILITY

15 33. Plaintiff repleads and incorporates by reference, as
16 if fully set forth again herein, the allegations contained in
17 Paragraphs 1 through 32 of this Complaint, and incorporates
18 them herein as if separately repled.

19 34. In 1990 the United States Congress made findings per
20 42 USC §12101 regarding physically disabled persons, finding
21 that laws were needed to more fully protect "some 43 million
22 Americans [with] one or more physical or mental disabilities;"
23 that had historically been isolated and segregated by society
24 and that "the continuing existence of unfair and unnecessary
25 discrimination and prejudice denies people with disabilities
26 the opportunity to compete on an equal basis and to pursue
27 those opportunities for which our free society is justifiably
28 famous..."

1 35. Congress stated as its purpose in passing the
2 Americans with Disabilities Act (42 USC §12101(b))

3 It is the purpose of this act

4 (1) to provide a clear and comprehensive national mandate
5 for the elimination of discrimination against individuals
with disabilities;

6 (2) to provide clear, strong, consistent, enforceable
7 standards addressing discrimination against individuals
with disabilities;

8 (3) to ensure that the Federal government plays a central
9 role in enforcing the standards established in this act on
behalf of individuals with disabilities; and

10 (4) to invoke the sweep of Congressional authority,
11 including the power to enforce the 14th Amendment and to
12 regulate commerce, in order to address the major areas of
discrimination faced day to day by people with
disabilities. (Emphasis added)

13 36. As part of the Americans with Disabilities Act,
14 Public Law 101-336, (hereinafter the "ADA"), Congress passed
15 "Title III - Public Accommodations and Services Operated by
16 Private Entities" (42 USC 12181ff). The subject property and
17 facility is one of the "private entities" which are considered
18 "public accommodations" for purposes of Title III (42 USC
19 12181(7)), including but not limited to:

20 a motion picture house, theater, concert hall, stadium or
21 other place of exhibition or entertainment (42 USC
12181(7) (C))

22 and

23 an auditorium, convention center, lecture hall, or other
24 place of public gathering (42 USC 12181(7) (D)).

25 37. Pursuant to 42 USC §12182(a), "No individual shall be
26 discriminated against on the basis of disability in the full
27 and equal enjoyment of the goods, services, facilities,
28 privileges, advantages, or accommodations of any place of

1 public accommodation by any person who owns, leases, or leases
2 to, or operates a place of public accommodation."

3 38. The specific prohibitions against discrimination
4 included:

5 A failure to make reasonable modifications in policies,
6 practices or procedures when such modifications are
7 necessary to afford such goods, services, facilities,
privileges, advantages or accommodations to individuals
with disabilities...; (42 USC (12182(b)(2)(A)(ii).)

8 A failure to take such steps as may be necessary to ensure
9 that no individual with a disability is excluded, denied
10 service, segregated, or otherwise treated differently than
other individuals because of the absence of auxiliary aids
and services...; (42 USC (12182(b)(A)(iii).)

11 A failure to remove architectural barriers, and
12 communication barriers that are structural in nature, in
existing facilities... where such removal is readily
achievable; (42 USC (12182(b)(2)(A)(iv).)

13 Where an entity can demonstrate that the removal of a
14 barrier under clause (iv) is not readily achievable, a
15 failure to make such goods, services, facilities,
16 privileges, advantages, or accommodations available
17 through alternative methods if such methods are readily
achievable." The acts and omissions of Defendants set
forth herein were in violation of Plaintiff's rights under
the ADA, and the regulations promulgated thereunder, 28
CFR Part 36ff. (42 USC (12182(b)(2)(A)(v).)

18
19 39. Defendants' failure to modify their policies and
20 practices and their failure to take steps necessary to ensure
21 that plaintiff and other similarly disabled persons were not
22 excluded, denied services or were otherwise treated differently
23 because of their disability is a violation of Title III of the
24 ADA.

25 40. Further, the removal of each of the barriers
26 complained of by plaintiff as hereinabove alleged, was at all
27 times "readily achievable" under the standards and regulations
28 established by the Department of Justice to implement Title III

1 of the ADA. As noted hereinabove, removal of each and every
 2 one of the architectural barriers complained of herein was also
 3 required under California law due to "alterations, structural
 4 repairs, or additions." Further, on information and belief,
 5 alterations to existing facilities since January 26, 1992 have
 6 also independently triggered requirements for removal of
 7 barriers to access for disabled persons pursuant to 42 USC
 8 §12183.

9 41. On information and belief, as of the date of
 10 plaintiff's encounter at the premises and the filing of this
 11 Complaint, the premises have denied and continue to deny full
 12 and equal access to plaintiff and to other disabled persons,
 13 including wheelchair users, in other respects, which violated
 14 plaintiff's rights to full and equal access and which
 15 discriminated against plaintiff on the basis of her disability,
 16 thus wrongfully denying to plaintiff the full and equal
 17 enjoyment of the goods, services, facilities, privileges,
 18 advantages and accommodations, and in treating plaintiff
 19 differently because of her disability in violation of the ADA.
 20 (42 USC §12182)

21 42. Pursuant to §308 of the ADA [42 USC 12188ff],
 22 Plaintiff is entitled to the remedies and procedures set forth
 23 in §204(a) of the Civil Rights Act of 1964, 42 USC 2000(a)-
 24 3(a), as plaintiff is being subjected to discrimination on the
 25 basis of her disability in violation of Title III and has
 26 reasonable grounds for believing that she will continue to be
 27 discriminated against in violation of the ADA. On information
 28 and belief, defendants have continued to maintain their

1 discriminatory policies and have continued to violate the law;
 2 denying plaintiff and other disabled persons access to this
 3 public accommodation since on or before October 2004. Pursuant
 4 to §308(a)(2), injunctive relief involving cases of violations
 5 of §302(b)(2)(A)(iv) and §303(a) shall include an order to make
 6 such facilities readily accessible to and usable by individuals
 7 with disabilities and to require the modification of a policy
 8 to the extent required by Title III.

9 43. Plaintiff seeks relief pursuant to remedies set forth
 10 in §204(a) of the Civil Rights Act of 1964, (42 USC 2000(a)-
 11 3(a)), and pursuant to Federal Regulations adopted to implement
 12 the ADA. Plaintiff is a qualified person for purposes of the
 13 ADA (42 USC §12188) who is being subjected to discrimination on
 14 the basis of disability in violation of Title III and who has
 15 reasonable grounds for believing she will be subjected to such
 16 discrimination each time that she may attempt to use the
 17 subject facilities. Plaintiff remains deterred from returning
 18 to such facilities by defendants' discriminatory policies and
 19 inaccessible facilities.

20 Wherefore plaintiff prays for relief as hereinafter
 21 stated.

22
 23 **FOURTH CAUSE OF ACTION:**
 24 **DISCRIMINATION IN VIOLATION OF TITLE II OF THE AMERICANS WITH**
 25 **DISABILITIES ACT OF 1990 AGAINST DEFENDANTS THE CITY AND COUNTY**
 26 **OF SAN FRANCISCO AND THE BOARD OF TRUSTEES FOR THE SAN**
 27 **FRANCISCO WAR MEMORIAL AND PERFORMING ARTS CENTER**

28 44. Plaintiff repleads and incorporates by reference, as
 if fully set forth hereafter, the allegations contained in

1 paragraphs 1 through 43 of this complaint and incorporates them
2 herein as if separately repled.

3 45. Effective January 26, 1992, Plaintiff was entitled to
4 the protections of the "Public Services" provision of Title II
5 of the Americans with Disabilities Act of 1990. Title II,
6 Subpart A prohibits discrimination by any "public entity",
7 including any state or local government, as defined by 42 USC
8 §12131, section 201 of the ADA.

9 46. Pursuant to 42 USC §12132, Section 202 of Title II, no
10 qualified individual with a disability shall, by reason of such
11 disability, be excluded from participation in or be denied the
12 benefits of the services, programs or activities of a public
13 entity, or be subjected to discrimination by any such entity.
14 Plaintiff was at all times relevant herein a qualified individual
15 with a disability as therein defined.

16 47. The defendant government entities have failed in their
17 responsibilities as owners and operators of the subject public
18 facilities under Title II to provide their services, programs and
19 activities in a full and equal manner to disabled persons as
20 described hereinabove, including but not limited to: failing to
21 insure availability of accessible seating at Davies Hall for use
22 by persons with physical disabilities; by failing to remove known
23 architectural barriers at the subject facilities so as to render
24 them accessible to physically disabled persons; and by
25 implementing discriminatory policies in the sale of tickets for
26 Senior Package patrons and other disabled patrons. As a
27 proximate result of Defendants' actions and omissions, Defendants
28 have discriminated against Plaintiff, in violation of Title II of

1 the ADA, and of the regulations adopted to implement the ADA.

2 48. On information and belief, Defendants have further
3 violated C.F.R § 35.151, regulations implementing the ADA, by
4 altering the Theatre in 1992 without ensuring that the altered
5 portions of the facility was "readily accessible to and usable by
6 individuals with disabilities."

7 49. As a result of such discrimination, in violation of §202
8 of the ADA, Plaintiff is entitled to the remedies, procedures and
9 rights set forth in Section 505 of the Rehabilitation Act of 1973
10 (29 USC §794a). Plaintiff seeks injunctive relief to require
11 Defendants to remove the barriers to access complained of, and
12 seeks statutory attorneys' fees, litigation expenses and costs,
13 according to proof.

14 50. **INJUNCTIVE RELIEF:** To the date of filing this
15 complaint, the facilities at Davies Hall continue to be
16 inaccessible to persons with disabilities such as Plaintiff.
17 Further, defendants continue their discriminatory policy of
18 selling "accessible seating" tickets on the internet and via
19 ticket agents to able-bodied persons, which policy results in the
20 loss of wheelchair accessible seating for "Senior Package"
21 patrons. Plaintiff requests that an injunction be ordered
22 requiring Defendants to take prompt action to modify the
23 aforementioned public facilities and policies to render them
24 accessible to and usable by plaintiff and other similarly situated
25 physically disabled persons, and to discontinue their
26 discriminatory ticket sale policies.

27 Wherefore, Plaintiff prays that the court grant relief
28 as requested hereinbelow.

**FIFTH CAUSE OF ACTION:
VIOLATION OF §504 OF THE REHABILITATION ACT OF 1973**

51. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the allegations contained in Paragraphs 1 through 50 of this complaint and incorporates them herein as if separately repled.

52. Defendants, The CITY AND COUNTY OF SAN FRANCISCO and the BOARD OF TRUSTEES FOR THE SAN FRANCISCO WAR MEMORIAL AND PERFORMING ARTS CENTER are governmental agencies existing under the laws of the State of California with responsibility for the public accommodations throughout the San Francisco War Memorial and Performing Arts Center, including the Davies Hall facilities. Plaintiff is informed and believes and therefore allege that Defendants, The CITY AND COUNTY OF SAN FRANCISCO and the BOARD OF TRUSTEES FOR THE SAN FRANCISCO WAR MEMORIAL AND PERFORMING ARTS CENTER; and DOES 1 through 25, Inclusive, are recipients of Federal financial assistance and that part of that financial assistance is used to fund the operations, construction and/or maintenance of the specific public facilities described herein, and the activities which take place therein.

53. By their actions or inactions in denying disabled accessible facilities at the public facilities specified herein, defendants have violated Plaintiff's rights under §504 of the Rehabilitation Act of 1973, 29 USC §794, and the regulations promulgated thereunder.

54. By their actions or inactions in denying to Plaintiff SHARON LETCHER her right to have equal access to the same programs, activities and environment as non-disabled persons, and

1 by otherwise discriminating against Plaintiff solely by reason of
 2 her physical disabilities, Defendants and each of them have
 3 violated Plaintiff's rights under §504 of the Rehabilitation Act
 4 of 1973 and the regulations promulgated thereunder. Plaintiff
 5 seeks 1) injunctive relief through a Court order requiring
 6 Defendants to correct the access deficiencies complained of
 7 herein so that Plaintiff will not continue to be discriminated
 8 against and/or deterred from entering and accessing the many
 9 public accommodations in Davies Hall on the same basis as
 10 non-disabled persons and 2) recovery of statutory attorney fees,
 11 litigation expenses and costs.

12 55. Plaintiff has no adequate remedy at law, and unless the
 13 relief requested herein is granted, Plaintiff will continue to
 14 suffer irreparable injury by the deprivation of meaningful access
 15 to the public performances and programs at Davies Symphony Hall
 16 and related public facilities operated by Defendants therein.

17 Wherefore, Plaintiff prays the court grant relief as
 18 requested hereinbelow.

19 PRAYER

20 Plaintiff SHARON LETCHER prays that this Court:

21 1. Issue a preliminary and permanent injunction
 22 directing defendants as current owners, operators, lessors,
 23 and/or lessees of the subject premises to modify their
 24 discriminatory policy regarding the sale and reservation of
 25 tickets to Davies Hall performances, and to modify their public
 26 facilities so that each provides full and equal access to
 27 persons with disabilities; and issue a preliminary and
 28

1 permanent injunction enjoining defendants from maintaining a
2 discriminatory policy and requiring defendants to provide
3 accessible facilities for plaintiff and similarly disabled
4 persons; or in the alternative, directing defendants to close
5 their business establishment and cease to operate as a public
6 accommodation or business establishment until such time as the
7 facilities are made accessible to persons with disabilities;

8 2. Retain jurisdiction over defendants until such time
9 as the Court is satisfied that defendants' unlawful policies,
10 practices, acts and omissions, and maintenance of inaccessible
11 public facilities as complained of herein no longer occur, and
12 cannot recur;

13 3. Award to Plaintiff SHARON LETCHER all appropriate
14 damages from Defendants SAN FRANCISCO PERFORMANCES, INC. and
15 THE SAN FRANCISCO SYMPHONY, and Does 1-10, including but not
16 limited to statutory damages, general damages and treble
17 damages in an amount within the jurisdiction of the Court, all
18 according to proof;

19 4. Award to plaintiff all reasonable attorney fees,
20 litigation expenses, and costs of this proceeding as provided
21 by law; and

22 5. Grant such other and further relief as this Court may
23 deem just and proper.

24 Dated: September 19, 2005

PAUL L. REIN
PATRICIA BARBOSA
JULIE MCLEAN
LAW OFFICES OF PAUL L. REIN

27 /s/ Paul L. Rein
Attorneys for Plaintiff
28 SHARON LETCHER

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: September 19, 2005 PAUL L. REIN
PATRICIA BARBOSA
JULIE MCLEAN
LAW OFFICES OF PAUL L. REIN

/s/ Paul L. Rein
Attorneys for Plaintiff
SHARON LETCHER

CERTIFICATION OF INTERESTED ENTITIES OR PARTIES

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: September 19, 2005 PAUL L. REIN
PATRICIA BARBOSA
JULIE MCLEAN
LAW OFFICES OF PAUL L. REIN

/s/ Paul L. Rein
Attorneys for Plaintiff
SHARON LETCHER